

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANIELLE RAE'NECE
PETERSON, DAEVON RAE'SHAWN
PETERSON, DAERON RAE'MONE PETERSON
and DAI'JA RAE'NESE SHANTELL BIBBS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RONDA QUEENESTER SEDITA PETERSON,

Respondent-Appellant,

and

ANTHONY DELSHAWN BIBBS, LARON
JALLIFFI and DEON WILKINS,

Respondents.

Before: Bandstra, C.J., and Saad and Meter, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We affirm.

The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not establish that termination of respondent-appellant's

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parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

Ms. Peterson neglected her children, put them at risk of harm by her behavior and failed to provide a suitable environment for her children. Unfortunately, Ms. Peterson also failed to comply with the remedial programs provided to her to address her mental health, drug and domestic violence problems. Her failure to attend the classes scheduled for her and her failure to regularly visit her children makes it highly doubtful that she will resolve the many problems which precipitated these proceedings and the trial court's rulings.

Respondent-appellant also argues that MCL 712A.19b(4); MSA 27.3178(598.19b)(4),¹ which automatically suspended parenting time upon the filing of the permanent custody petition, is unconstitutional. Respondent-appellant did not preserve this issue by raising it in the trial court, *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997), but this Court may consider unpreserved constitutional claims where there is no question of fact and it is in the interests of justice to do so, *Great Lakes Division of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 426; 576 NW2d 667 (1998).

Under established rules of statutory construction, statutes are presumed to be constitutional, and courts have a duty to construe a statute as constitutional unless unconstitutionality is clearly apparent. *In re Ayers*, 239 Mich App 8, 10; 608 NW2d 132 (1999). Every reasonable presumption must be made in favor of constitutionality. *Petrus v Dickinson Co Bd of Comm'rs*, 184 Mich App 282, 293; 457 NW2d 359 (1990). The party challenging the constitutionality of a statute bears the burden of overcoming the presumption of constitutionality. *Ayers, supra*.

Respondent-appellant argues that application of MCL 712A.19b(4); MSA 27.3178(598.19b)(4) violates her right to equal protection because she is treated differently than a parent who is not the subject of a petition for permanent custody. The United States and Michigan Constitutions guarantee equal protection of the law. US Const, Am XIV; Const 1963, art 1, §2; *People v Pitts*, 222 Mich App 260, 272; 564 NW2d 93 (1997). Both constitutions provide similar protections. *Id.* Generally, equal protection requires that persons in similar circumstances be treated similarly. *Id.* Here, MCL 712A.19b(4); MSA 27.3178(598.19b)(4) applies equally to any parent who is the subject of a termination petition. Respondent-appellant cannot compare her situation to a parent who is not subject to a termination petition because she is not similarly situated with that parent. The fact that a termination petition was filed against respondent-appellant sets her apart from a parent who has not had a termination petition filed against him or her. Therefore, respondent-appellant's equal protection argument is without merit.

Respondent-appellant also argues that the statute violates her right to due process because it imposes the burden of proof on her to show that parenting time would not harm the children. To determine whether a statute violates due process, the pertinent question is whether the statute bears a reasonable relation to a permissible legislative objective. *Shavers v Attorney General*, 402 Mich 554, 612; 267 NW2d 72 (1978). The purpose of child protective proceedings is the protection of the child, and the juvenile code is intended to protect children from unfit homes rather than to punish their parents.

In re Brock, 442 Mich 101, 107-108; 499 NW2d 752 (1993). The Legislature reasonably determined that further parenting time may be harmful to a child once a petition has been filed to terminate that parent's parental rights. Nevertheless, the statute affords a parent the opportunity for continued parenting time upon a showing that it would not harm the child. Here, respondent-appellant did not avail herself of this opportunity. We conclude, therefore, that the statute does not violate respondent's right to due process.

Affirmed.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Patrick M. Meter

¹ MCL 712A.19b(4); MSA 27.3178(598.19b)(4) provides, in relevant part:

If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended under this subsection establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.